

DEPARTMENT OF ENERGY**Office of Energy Efficiency and Renewable Energy**

10 CFR Part 490

[Docket No. EE-RM-96-200]

Alternative Fueled Vehicle Acquisition Requirements for Private and Local Government Fleets

Agency: Department of Energy (DOE)

Action: Advance Notice of Proposed Rulemaking and Notice of Public Hearings

SUMMARY: The Department of Energy (DOE) is today publishing an advance notice of proposed rulemaking, as required by the Energy Policy Act of 1992 (the Act), that begins a process to determine whether alternative fueled vehicle (AFV) acquisition requirements for certain private and local government automobile fleets should be promulgated. This notice also requests comments on progress toward the goals set forth in section 502(b)(2) of the Act, identifying the problems with achieving the goals, assessing the adequacy and practicability of and considering all actions necessary to meet the goals. This notice is intended to stimulate comments that will inform DOE decisions concerning future rulemaking actions and non-regulatory initiatives to promote alternative fuels and alternative fueled vehicles.

DATES: Written comments (8 copies) must be received by the Department by [Insert date 90 days from date of publication].

Oral views, data, and arguments may be presented at the public hearings, which are scheduled as follows:

1. In Dallas, TX, beginning at 10:15 a.m. on September 17, 1996.
2. In Sacramento, CA, beginning at 9:30 a.m. on September 25, 1996.
3. In Washington, D.C., beginning at 9:30 a.m. on October 9, 1996.

Requests to speak at a hearing should be received no later than 4:00 p.m., September 13, 1996 for the Dallas, TX hearing, September 23, 1996 for the Sacramento, CA hearing, and October 7, 1996 for the Washington, D.C. hearing. The length of each oral presentation is limited to 10 minutes.

ADDRESSES: The hearings will be held at the following addresses:

1. Dallas, TX - Wyndham Anatole Hotel, 2201 Stemmons Freeway (Market Center), Obelisk A Room (Mezzanine Level), Dallas, TX 75207.

2. Sacramento, CA - Secretary of State Archive/Complex, 1500 11th Street (11th & O Streets Entrance), Auditorium (Main Lobby), Sacramento, CA.

3. Washington, D.C. - U.S. Department of Energy, Forrestal Building, Auditorium, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Written comments (8 copies) and requests to speak at a hearing are to be submitted to U.S. Department of Energy, Office of Transportation Technologies, EE-33, Docket No.EE-RM-96-200, 1000 Independence Avenue, S.W., Washington, D.C. 20585, telephone (202) 586-3012. Copies of the transcript of the public hearings, written comments, technical reference materials mentioned in the notice, and any other docket material received may be read and copied at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Room 1E-190, 1000 Independence Ave. S.W., Washington, D.C. 20585, telephone (202) 586-6020 between the hours of 8:30 a.m. and 4:00 p.m. Monday through Friday except Federal holidays. The docket file material will be filed under "EE-RM-96-200."

For more information concerning public participation in this rulemaking proceeding, see section V of this notice (Public Comment Procedures).

FOR FURTHER INFORMATION CONTACT:

David Rodgers, Office of Energy Efficiency and Renewable Energy, EE-34, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, afv-deployment@hq.doe.gov; or phone (202) 586-9171.

For information concerning the public hearings, submission of written comments; and to obtain copies of materials referenced in this notice, contact Andi Kasarsky, (202) 586-3012.

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I. Introduction

A. Authority

DOE today begins a rulemaking required by section 507 of the Energy Policy Act of 1992 (the Act), Pub. L. 102-486, to determine whether alternative fueled vehicle acquisition requirements for private and local government automobile fleets are "necessary" to achieve the Act's clean air and energy security goals. Section 507 provides for an early rulemaking to make this determination by December 15, 1996. 42 U.S.C. 13256(b). If DOE determines that vehicle acquisition requirements are not necessary in the early rulemaking, then section 507 requires a later rulemaking (beginning no later than April 1998) to determine by January 1, 2000, whether vehicle acquisition requirements are "necessary" in light of then current circumstances. 42 U.S.C. 13256(b)(3), (c) and (e). If DOE has not promulgated a final rule to implement an early mandate by December 15, 1996, it is precluded from doing so and must proceed to the later rulemaking. 42 U.S.C. 13256(b).

B. Program background and goals

The transportation sector currently accounts for approximately two-thirds of all U.S. petroleum use and roughly one-fourth of total U.S. energy consumption. A virtual one-to-one relationship exists between additional gasoline consumption and America's increased use of imported oil. The gap between the transportation sector's demand for petroleum and our domestic production continues to widen. The U.S. consumes 4 million barrels per day more for transportation purposes alone than it produces; that gap is projected to rise to 9 million barrels per day by the year 2010. According to the latest projections by the Energy Information Administration, the transportation sector will consume 14.1 million barrels per day of petroleum in 2010. About 7.4 million of these barrels are projected to be used by light duty vehicles. The transportation sector represents one of the major sources of short and medium term energy vulnerability for American society and the American economy today.

Congress enacted the Energy Policy Act of 1992, Pub. L. 102-486, in part to address these energy security and clean air concerns. Titles III, IV, V, and VI of the Act contain provisions requiring DOE to establish a variety of programs aimed at displacing substantial quantities of oil consumed by motor vehicles.

Title III sets forth mandatory requirements for Federal fleet acquisitions of alternative fueled vehicles, which began in fiscal year 1993. Since that time, over 20,000 alternative fueled vehicles have been added to the Federal fleet. Federal agencies have gained considerable experience with all alternative fuels and vehicle types. Auto manufacturers have significantly increased the number and type of alternative fueled vehicles and the number of alternative fuel refueling stations has also increased. Title IV directs DOE, among other things, to establish a program to certify alternative fuel technicians and to acquire data about alternative fuels and alternative fueled vehicles and to establish a public information program. DOE has established a cooperative program with the auto service industry and numerous technical colleges to develop and implement national standards for certification of alternative fuel training

programs. Over the last several years, DOE has explored the costs and benefits of alternative fuel and AFV use in the transportation sector. A series of technical reports record the results of these analyses. The series title is *Assessment of Costs and Benefits of Flexible and Alternative Fuel Use in the U.S. Transportation Sector*. These reports will be placed in the public docket for this rulemaking in DOE's Freedom of Information Reading Room.

Section 502 of title V requires DOE to establish a program to promote development and use of replacement fuels, especially domestic replacement fuels, in light duty motor vehicles. DOE is to focus on those replacement fuels having the most impact in: reducing oil imports, improving the health of the Nation's economy and reducing emissions of greenhouse gases. DOE is in the process of performing analytical work to guide the design of this replacement fuel demand and supply program. Section 502(b) requires DOE to assess, among other things, the feasibility of producing adequate replacement fuels to displace 10% of U.S. motor fuel by 2000 and 30% by 2010. DOE has undertaken such a study, the partial results of which have been published by DOE's Office of Policy as *Technical Report Fourteen: Market Potential and Impacts of Alternative Fuel Use in Light-Duty Vehicles: A 2000/2010 Analysis*. This report is available by calling the National Alternative Fuels Hotline at 1-800-423-1DOE or 703-528-3500. A copy will be placed in the docket file for this rulemaking. DOE is also required by section 506 to prepare a Technical and Policy Analysis of various issues related to replacement fuels and alternative fueled vehicles for submission to the President and Congress. A draft of this report is under preparation and a copy will be placed in the docket for this rulemaking when it becomes available. Any comments received on this ANOPR relating to the fuel displacement goals are expected to be key parts of the process of drawing up the section 502 program.

Pursuant to section 505 of the Act, 42 U.S.C. 13255, DOE is promoting voluntary use of alternative fueled vehicles through its Clean Cities Program. Under this program, DOE joins with local governments and organizations in public/private partnerships aimed at developing markets for alternative fueled vehicles. The program aims to put together enough participants in each local area to reach the necessary volume of alternative fueled vehicle use to justify installation of refueling infrastructure and other joint facilities, as well as to promote other forms of cooperation. To date, 48 U.S. communities have signed agreements to participate.

Title V also contains non-discretionary alternative fueled vehicle acquisition requirements. Sections 501 and 507(o) of the Act require certain State government fleets and alternative fuel providers to include increasing percentages of alternative fueled vehicles in their annual acquisitions of new light duty vehicles. DOE published a final rule to implement these vehicle acquisition requirements on March 14, 1996. 61 FR 10621.

C. Required rulemaking

This advance notice of proposed rulemaking is the first step in a required rulemaking under sections 507(a) and (b) of title V of the Act for determining whether

local government and private fleets (other than alternative fuel providers subject to section 501) should be required to acquire alternative fueled vehicles. 42 U.S.C. 13257(a) and (b). A DOE decision to impose alternative fueled vehicle acquisition requirements on private and local fleets is dependent on a determination that such requirements are "necessary" to achieve the clean air and energy security goals in sections 502 and 504.

Such a fleet mandate would cover local government and private fleets (excluding alternative fuel provider fleets covered by section 501 of the Act) of 20 or more light duty motor vehicles (including passenger cars and trucks under 8500 lbs. gross vehicle weight), which are:

- centrally fueled or capable of being centrally fueled;
- operated primarily within a metropolitan statistical area with a population of at least 250,000 according to the 1980 Census; and
- owned, leased, operated or otherwise controlled by an entity which owns or operates 50 or more such vehicles in the United States.

Various classes of light duty motor vehicles are excluded from the basis for determining coverage. Excluded categories are listed in section 490.3 of DOE's final rule for State government fleets and certain alternative fuel providers, 10 CFR part 490, 61 FR 10654. Appendix A of subpart A of that rule (61 FR 10655) is a list of the metropolitan statistical areas with a population of at least 250,000 according to the 1980 Census.

1. *Advance notice of proposed rulemaking.* Section 507(a)(3) of the Act requires DOE to publish an advance notice of proposed rulemaking for the purposes of: (1) evaluating progress toward the goals of producing replacement fuels to replace, on an energy equivalent basis, at least 10% of motor fuels consumption by the year 2000 and at least 30% by the year 2010; (2) identifying the problems with achieving the goals; (3) assessing the adequacy and practicability of the goals; and (4) considering all actions necessary to meet the goals. Today's notice is issued to comply with this statutory requirement.

2. *Early rulemaking.* Sections 507(a)(4) and (b)(1) of the Act direct DOE, after obtaining public input on the issues raised in this notice, to publish a notice of proposed rulemaking to determine whether a fleet requirement to begin in model year 1999 is necessary to meet the 30% fuel replacement goal by 2010 and (ii) that the goal is practicable and actually achievable through implementation of a private and local fleet requirement program along with other measures. 42 U.S.C. 13257(a)(4) and (b)(1).

Subject to change by rule, section 507(a) sets forth the following tentative alternative fueled vehicle acquisition schedule for requirements established by the early rulemaking:

20 percent of the light duty motor vehicles acquired in model years 1999, 2000 and 2001;

30 percent of those acquired in model year 2002;

40 percent of those acquired in model year 2003;

50 percent of those acquired in model year 2004;
 60 percent of those acquired in model year 2005; and
 70 percent of those acquired in model year 2006 and thereafter.

DOE may establish, by rule, a lesser percentage for any model year or establish a later beginning date for the mandate to begin. 42 U.S.C. 13257(a)(2).

In order to determine that a mandate is "necessary," section 507(b) of the Act, 42 U.S.C. 13257(b), requires DOE to make the following findings by rule:

(A) The goal of replacement fuel use described in section 502(b)(2)(B) is not expected to be actually achieved by 2010 (or such other date as is established under section 504) by voluntary means or pursuant to Title V or any other law without such a fleet requirement program, taking into consideration the status of the achievement of the interim goal described in section 502(b)(2)(A);

(B) Such goal is practicable and actually achievable within periods specified in section 502(b)(2) through implementation of such a fleet requirement program in combination with voluntary means and the application of other programs relevant to achieving such goals; and

© By 1998 (when model year 1999 begins) or the date specified by the Secretary in a rule initiating a fleet requirement program—

(i) there exists sufficient evidence to ensure that the fuel and the needed infrastructure, including the supply and deliverability systems, will be installed and located at convenient places in the fleet areas subject to the rule and will be fully operational when the rule is effective to offer a reliable and timely supply of the applicable alternative fuel at reasonable costs (as compared to conventional fuels) to meet the fleet requirement program, as demonstrated through use of the provisions of section 505(1) of the Act regarding voluntary commitments or other adequate, reliable, and convincing forms of agreements, arrangements, or representations that such fuels and infrastructure are in existence or will exist when the rule is effective and will be expanded as the percentages increase annually;

(ii) there will be a sufficient number of new alternative fueled vehicles from original equipment manufacturers that comply with all applicable requirements of the Clean Air Act and the National Traffic and Motor Vehicle Safety Act of 1966;

(iii) such new vehicles will meet the applicable non-Federal and non-State fleet performance requirements of such fleets (including range, passenger or cargo-carrying capacity, reliability, refueling capability, vehicle mix, and economical operation and maintenance); and

(iv) establishment of a fleet requirement program by rule will not result in unfair competitive advantages or disadvantages, or result in undue economic hardship, to the affected fleets.

If DOE has not promulgated a final rule to implement an early mandate by December 15, 1996, it is precluded from doing so and must proceed to a later rulemaking (beginning no later than April 1998) to determine whether a mandate to begin in model year 2002 or thereafter is "necessary" under section 507(e). 42 U.S.C. 13257(b)(1)(e). DOE notes that there are several considerations warranting delay before completing a rulemaking involving the imposition of fleet AFV requirements for private and local government fleets. First, DOE has not yet completed its study of the technical and economic feasibility of meeting the goals set forth in section 502(b)(2). Second, it would be useful to observe implementation of the final rule under sections 501 and 507(o) in considering many of the issues key to possible private and local government fleet requirements. Implementation of these initial mandates was delayed from the statutory schedule by one model year and will begin in September of 1996. DOE is especially interested in Alternative State Plans which may capitalize on the Clean Cities Program and involve a substantial number of private and local fleets. Third, the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4, and President Clinton's Executive Orders 12866 and 12875 require careful consultations with stakeholders and creative exploration of alternatives to regulation that could achieve the statutory objectives.

Lastly, the Department also notes that it is unlikely that the procedural requirements for this early rulemaking could be completed, as a practical matter, before December 15, 1996, the deadline for a final rule under section 507(b).

3. *Later rulemaking.* If DOE does not adopt an early mandate, section 507(e) and (g) of the Act require DOE to initiate a rulemaking to determine if the statutory conditions for a later mandate, beginning in model year 2002 or thereafter, are met. While the required determinations for the early and later rulemakings are not identical, the information gathered through this advance notice of proposed rulemaking process will be relevant and useful for making the required determinations in the later rulemaking as well.

Section 507(g) provides the following acquisition schedule for a program established by this later rulemaking:

- 20 percent of the light duty motor vehicles acquired in model year 2002;
- 40 percent of those acquired in model year 2003;
- 60 percent of those acquired in model year 2004; and
- 70 percent of those acquired in model year 2005 and thereafter.

If DOE were eventually to determine that the conditions for the late mandate under sections 507 (e) and (g) were not met, DOE would be required by section 509 of the Act to submit to Congress recommendations for possible requirements or incentives applying to fuel suppliers, vehicle suppliers and motorists that would achieve the goals.

II. General Issues Relating to Replacement Fuel Goals

As explained in Section I of this notice, section 507(a)(3) of Act requires DOE to publish an advance notice of proposed rulemaking for the purposes of: (1) evaluating progress toward the replacement fuel goals of producing replacement fuels to replace,

on an energy equivalent basis, at least 10% of motor fuels consumption by the year 2000 and at least 30% by the year 2010; (2) identifying the problems with achieving the goals; (3) assessing the adequacy and practicability of the goals; and (4) considering all actions necessary to meet the goals.

Section 502(a) lays out a specific goal for a “Replacement Fuel Supply and Demand Program”: to promote the development and use in light duty motor vehicles of domestic replacement fuels to substitute for imported petroleum motor fuels to the maximum extent practicable.

42 U.S.C. 13252. In designing the program, DOE is to focus on those replacement fuels having the most impact in reducing oil imports, improving the health of the Nation’s economy and reducing emissions of greenhouse gases. Section 502(b)(2) further requires DOE to assess, among other things, the feasibility of producing adequate replacement fuels to displace 10% of U.S. motor fuel by 2000 and 30% by 2010. 42 U.S.C. 13252(b)(2).

DOE invites comments on the following general issues related to achieving the Act’s replacement fuel goals:

1. What voluntary and incentive measures could be undertaken, either in conjunction with fleet AFV requirements or in lieu of such mandates, that would be effective in achieving progress toward the fuel replacement goals?
2. What methods or criteria should DOE use to assess the adequacy and practicality of specific replacement fuel goals (e.g., the 10% and 30% targets) or for determining whether the goals should be modified?
3. How should the potential for dramatic changes in the price and availability of petroleum (e.g., due to a sharp curtailment in world petroleum supplies) be factored into the design of a replacement fuels program?
4. How should DOE estimate the fuel replacement impacts from other federal or state alternative fueled vehicle mandates, voluntary commitments, use of dual fueled vehicles that operate only part time on alternative fuels, and other measures?
5. What factors should DOE take into account when estimating the impact of replacement fuels on reducing oil imports; improving the health of the nation’s economy; and reducing greenhouse gas emissions?

III. Additional Issues Related to Fleet Mandate Determinations

DOE seeks comment on the following issues that may be relevant to any future DOE decision to propose alternative fueled vehicle acquisition requirements for local government and private fleets:

1. In assessing whether sufficient numbers of new alternative fueled vehicles complying with Clean Air Act, 42 U.S.C. 7401 et seq., and National Traffic and Motor Vehicle Safety Act of 1966, 49 U.S.C. 30101 et seq., requirements are available, should DOE look to anticipated or committed production volumes, number of models offered, or number of vehicle categories in which vehicles are offered? Should DOE base its assessment on the number of alternative fuel configurations in which such vehicles are offered or only to the totals for all alternative fuel configurations?

2. In determining whether alternative fuel infrastructure, including the supply and deliverability systems, will be installed and located at convenient places in the fleet areas, should DOE consider whether extended range refueling will be available, or should it only consider whether central fueling facilities will be adequate?

3. What would constitute unfair competitive advantage or disadvantage to the affected fleets? What would constitute undue economic hardship to the affected fleets?

4. DOE is required by section 507(l) to take into consideration, to the extent it has discretion to do so, the following factors: energy security, costs, safety, lead time requirements, vehicle miles traveled annually, effect on greenhouse gases, technological feasibility, energy requirements, economic impacts including impacts on fleets, workers and consumers, such as users of the alternative fuels for other purposes, and the availability of alternative fuels and alternative fueled vehicles. What bearing, if any, should these factors have on a DOE determination as to whether it is "necessary" under section 507 to impose alternative fueled vehicle acquisition requirements on local government and private fleets?

IV. Review and Analysis Requirements

The Office of Information and Regulatory Affairs in the Office of Management and Budget (OIRA) has determined that this rulemaking is a significant regulatory action under Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this advance notice was submitted for review to OIRA. Were DOE to propose alternative fueled vehicle acquisition requirements for local government and private fleets, the rulemaking could constitute an economically significant regulatory action, and DOE would prepare and submit to OIRA for review the assessment of costs and benefits required by section 6(a)(3) of Executive Order 12866. Other procedural and analysis requirements in other Executive Orders and statutes also may apply to such future rulemaking action, including the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and the Unfunded Mandates Act of 1995, Pub. L. 104-4, and the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*

V. Public Comment Procedures

a. Participation in Rulemaking

The Department encourages the maximum level of public participation possible in this rulemaking. Individual fleet operators, representatives of trade groups, local governments, consumers of fleet services, vehicle manufacturers, fuel providers, including producers, distributors and service station operators, associations, States or other governmental entities, and others are urged to submit written comments on the proposal. The Department also encourages interested persons to participate in the public hearings to be held at the times and places indicated at the beginning of this notice.

The DOE has established a period of 90 days following publication of this notice for persons to comment on this advance notice of proposed rulemaking. All public comments and the transcripts of the public hearings and other docket material will be

available for review in the DOE Freedom of Information Reading Room at the address shown at the beginning of this notice. The docket file material will be filed under "EE-RM-96-200."

b. Written Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views or arguments with respect to the subjects set forth in this notice. Instructions for submitting written comments are set forth at the beginning of this notice and below.

Comments (8 copies) should be labeled both on the envelope and on the documents, "Fleet AFV Acquisition Requirements Rulemaking (Docket No. EE-RM-96-200)," and must be received by the date specified at the beginning of this notice. All comments and other relevant information received by the date specified at the beginning of this notice will be considered by DOE in the subsequent stages of the rulemaking process.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data that is believed to be confidential and exempt by law from public disclosure should submit one complete copy of the document and 3 copies, if possible, from which the information believed to be confidential has been deleted. The Department will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

c. Public Hearings

1. *Procedure for Submitting Requests to Speak.* The dates, times and places of the public hearings are indicated at the beginning of this notice. The Department invites any person who has an interest in these proceedings, or who is a representative of a group or class of persons having an interest, to make a request for an opportunity to make an oral presentation at the public hearings. Such requests should be labeled both on the letter and the envelope - "Fleet AFV Acquisition Requirements Rulemaking (Docket No. EE-RM-96-200)," should be sent to the address given at the beginning of this notice and must be received by the date specified. Alternatively, requests may be telephoned to the telephone number given. The person making the request should give a telephone number where he or she may be contacted. Persons selected to be heard will be notified by DOE as to the approximate time they will be speaking.

Each person selected to be heard is requested to submit 8 copies of his/her statement at the registration desk prior to the beginning of the hearing. In the event any person wishing to testify cannot meet this requirement, that person may make alternative arrangements by calling (202) 586-3012 in advance or by so indicating in the letter requesting to make an oral presentation.

2. *Conduct of Hearing.* The Department reserves the right to select the persons to be heard at the hearings, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation is limited to 10 minutes.

A DOE official will be designated to preside at the hearings. The hearings will not be judicial or evidentiary-type hearings, but will be conducted in accordance with 5

U.S.C. 533 and section 501 of the DOE Organization Act, 42 U.S.C. 7191. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal or clarifying statement, subject to time limitations. Any further procedural rules regarding proper conduct of the hearings will be announced by the presiding official.

Transcripts of the hearings will be made and the entire record of this rulemaking, including the transcripts, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room as provided at the beginning of this notice. Any person may purchase a copy of the transcripts from the transcribing reporter.

Issued in Washington, D.C. on

Christine A. Ervin
Assistant Secretary
Energy Efficiency and Renewable Energy